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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,718	02/24/2004	Mark Banister	MEDIPACS 04.03	2762
27667	7590	09/15/2010		
HAYES SOLOWAY P.C. 3450 E. SUNRISE DRIVE, SUITE 140 TUCSON, AZ 85718				
EXAMINER				
FREAY, CHARLES GRANT				
ART UNIT		PAPER NUMBER		
3746				
NOTIFICATION DATE		DELIVERY MODE		
09/15/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/786,718

Applicant(s)

BANISTER, MARK

Examiner

Charles G. Freay

Art Unit

3746

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on the RCE of August 2, 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2, 3, 15-21, 24-61 and 63-78 is/are pending in the application.
- 4a) Of the above claim(s) 8-12, 16, 18 and 27-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2, 3, 5-7, 17, 19-21, 24-26, 58-61 and 63-78 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 2, 2010 has been entered.

This office action is in response to the amendment of August 2, 2010. The examiner has considered each of the applicant's arguments. The rejections and remarks set forth below address each of the arguments.

Claim Objections

Claim 63 is objected to because of the following informalities: in line 5 "is" should be "are". Appropriate correction is required.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2, 3, 15, 17, 19-21, 24-26, 58-61, 63-65, and 70-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over da Costa in view of Chinn et al as set forth in the rejection of claims 1-4, 15, 17, 19-21 and 24-26 of the Office Action of July 1, 2009.

The examiner notes that the intended use set forth in the preamble of claim 58, and the claims which depend therefrom, does not define the invention over the applied references. Further defining the fluid which is intended to be pumped by the claimed pump also does not structurally define or differentiate the claimed from the applied prior art references.

Claims 5-7 and 65-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over da Costa in view of Chinn et al as applied to claim 59 above, and further in view of Culp (USPN 5,192,197).

As set forth above da Costa in view of Chinn disclose the invention substantially as claimed but does not disclose a programmable microprocessor responsive to a sensor measuring flow properties and delivering control signals to the electroactuated pump actuators. Culp discloses a pump having an actuator housing 22 for accommodating fluid flow. There are a number of individual electroactuated actuators forming a pump and there is an activator including a controller which is responsive to pressure, temperature and flow signals from a sensor 40. The controller is a programmable 36, 38 microprocessor for controlling the actuation at a predetermined time and rate. At the time of the invention it would have been obvious to one of ordinary skill in the art to provide the pump of da Costa et al in view of Chinn to provide a

microprocessor controller and sensor system as taught by Culp in order to strictly and accurately control actuation of the pump and control flow rates and delivery volumes.

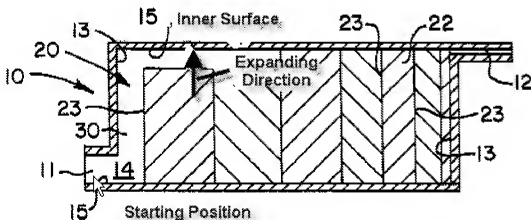
Response to Arguments

Applicant's arguments filed August 2, 2010 have been fully considered but they are not persuasive.

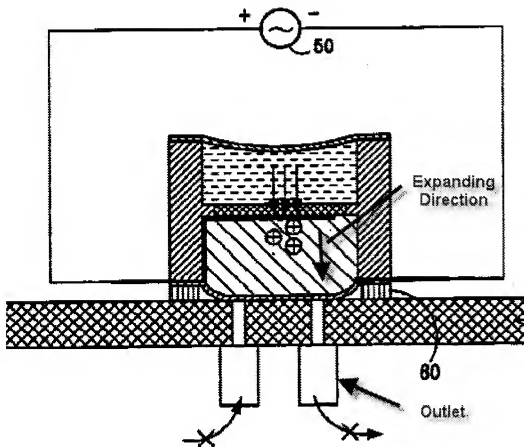
The Applicant argues that da Costa and Chinn et al do not disclose a pump where "each actuator has a starting position in which the actuator is separated from the inner top surface of the chamber, and wherein successive actuators in the series are sequentially expanded from the starting portion toward the inner top surface of the chamber to advance the flow of fluid through the chamber and out the outlet port". The examiner disagrees. As shown below da Costa shows the pump having a starting position away from the top inner surface and the arrow shows the direction in which the actuator is expanded until it reaches the top inner surface. The applicant argues that the position shown below is a "contracting position", however, the examiner makes the arguments that this can also be called the starting position. Noting the position below as the starting position addresses all the applicant's arguments presented at the bottom of page 12 and the top of page 13 with regards to the "contracting position" and the "applicant's defined "contracting position" not allowing compression in da Costa.

The Applicant also argues that since da Costa is a hermetic compressor it does not have an outlet. This is in direct contradiction to da Costa's own description which clearly shows and refers to an outlet at 12. Note the last phrase of the Abstract which

sets forth that the actuators are signaled "so as to cause the displacement....of fluid admitted into the shell (10), from the inlet (11) to the outlet (12)".



With regards to Chinn the applicant states that Examiner has cited Chinn to show an elastomeric material used as a valve. This is not true as the prosecution record shows. Chinn has been cited for its teaching of a pump. Note specifically the Final Rejection of July 1, 2009, which is the rejection set forth in all following office actions, stating that Chinn discloses an actuator which may be used as a pump on page 3. The applicant argues that Chinn is not a pump. However, Chinn states that its device is a pump in line 1 of column 7. The applicant argues that Chinn doesn't move anything and does not have an outlet. With regards to the "not moving anything" argument the Examiner references at least again the top of column 9 at line 1-10 which sets forth that Chinn moves fluid. Chinn shows many embodiments having an outlet but one representative figure, Fig. 10C, has been reproduced below to show an outlet.



Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on 571-272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles G Freay/
Primary Examiner
Art Unit 3746

CGF
September 12, 2010